IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.712 OF 2007
IN
MISC. APPLICATION NO.40 OF 2007
IN
NOTICE OF MOTION NO.1850 OF 2006
IN
S.C. SUIT NO.6757 OF 1995

1. Mr. Rampyare Bharat Dubey
   (since deceased)
2. Triloknath Rampyare Dubey
3. Budhi Rampyare Dubey
4. Smt. Shantidevi Dubey
5. Smt. Ranidevi Surendra Dubey
6. Surendra Rampyare Dubey ... Appellants

Versus

1. Mr.Prasannakumar Mishra
2. The Court Receiver ... Respondents

Mr.Manoj P. Mhatre, i/b. Shri Sunil Dubey for the Appellants
Shri R.R. Sharma for the Respondents

CORAM : S.R. SATHE,J.
DATED : 20/09/2007

P.C :-

1. Heard both the learned Advocates at length.

2. Matter is heard finally at admission stage.

3. The Appellants-original defendants in S.C. Suit No.6757 of 1995 have preferred this appeal against the

order passed by the City Civil Court, Mumbai in Miscellaneous Application No.40 of 2007 in Notice of Motion No.1850 of 2006 whereby the learned Trial Judge clarified his earlier order dated 07/12/2006 and directed that receiver shall hand over the possession of the suit floor mill to the Plaintiff after complying all formalities. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiffs' and 'Defendants'.

4. The brief facts giving rise to this appeal are as under :-

The suit property which is a floor mill situated on the ground floor of B.A. Bhatt Chawl, Andheri (East), Mumbai was owned by the father of the present Respondent No.1 Appellants-original defendant Nos.1 to 3 were working in the said floor mill as employee of the Plaintiff. However, subsequently, the defendants started laying a claim over the suit floor mill. Father of present Respondent i.e. original Plaintiff, therefore filed the above mentioned suit for declaration that he is the owner of the suit floor mill and for permanent injunction restraining defendants from obstructing Plaintiff's possession and entering the suit floor mill.

5. In the Notice of Motion, the trial Judge was pleased to pass an interim injunction order and appointed Court Receiver, High Court Bombay to take possession of the floor mill. Accordingly, the Court Receiver took formal possession of the suit floor mill on 08/11/1995 and then it was given to the defendants as agents of the receiver on certain terms and conditions.

6. The above mentioned suit was decreed in favour of Plaintiff on 29/01/2005. Being aggrieved by the same, defendants filed First Appeal No.488 of 2005, however, the same also came to be dismissed by the High Court. LPA preferred by defendant Nos.1 to 3 against the said order was also dismissed. Thereafter, the original Plaintiff took out Notice of Motion No.1850 of 2006 and claimed certain reliefs. However, the said Notice of Motion was rejected.

7. The original Plaintiff, therefore, filed Miscellaneous Application No.40 of 2007 and prayed that the order dated 07/12/2006 be clarified because it was only mentioned in the order that Court Receiver formally appointed was discharged. But no specific

direction to hand over the possession which Court Receiver had taken was given. Hence, he prayed that the direction be issued to that effect.

8. The Appellants-original defendants opposed the said application. After hearing both the sides, learned City Civil Judge Bombay passed the order dated 16/08/2007 and clarified his earlier order dated 07/12/2006 and directed the Receiver to hand over the possession of the suit floor mill to the Plaintiff after complying all formalities.

9. The above mentioned order is challenged by the defendant in the present Appeal from order. In this appeal before me, the learned Advocate for the appellants-original defendants has urged only two points. Firstly, he submitted that once the Notice of Motion was disposed of by the learned Trial Judge by his order dated 07/12/2006 there was no reason for him to entertain the Miscellaneous Application and to clarify the order. Secondly, he canvassed before me that only business of the floor mill was in dispute and there was no dispute about the possession of the premises in which the floor mill is situated. He, therefore, submitted that the direction/ clarification

given by the Court is not legal and correct. He, therefore, submitted that the appeal be allowed and order passed by the learned Trial Judge be set aside. As against this, learned Advocate for the Respondent-original Plaintiff submitted that as the possession of the suit floor mill was taken by the receiver and it was given to defendants on usual terms, after the decree was passed in favour of Plaintiffs and Court Receiver was discharged, it was necessary for the Receiver to hand over the possession of the suit floor mill to Plaintiff. He, therefore, submitted that the order passed by the learned Trial Judge on 16/08/2007 is legal and correct.

10. From the perusal of the record, it is very clear that the dispute between the parties was in respect of the suit floor mill. There is nothing on record to indicate that the dispute was restricted to right to carry on business of floor mill and that there was no dispute regarding the premises. In fact, Plaintiff had specifically averred that suit floor mill is owned by him. Thereby stating that the premises as well as business of the floor mill in the Suit Property is owned by the Plaintiff and that the defendants have no concern with the same. It must be noted that this

case of the Plaintiffs is approved and decree is passed in his favour. Not only that the said decree has been confirmed right upto the High Court. If we see the said decree, we find that therein it is clearly mentioned that Plaintiff is the owner of the suit floor mill to the exclusion of the defendant Nos.1 to 3. Not only that but defendants were permanently restrained from causing obstruction in the floor mill business of the Plaintiff. What is more to be noted is that it was also directed that Plaintiff is entitled to receive the amount alongwith accrued interest thereon deposited by the defendants in the Court while acting as agent of the Receiver. So, it is needless to say that once it is held that Plaintiff is the owner of the suit floor mill then possession of the suit floor which was given by the receiver to defendants on certain terms and conditions has to be returned to receiver and finally to Plaintiff as a result of the decree. However, it seems that the Trial Court presuming that receiver has in fact not done anything and he had taken only formal possession discharged him without giving any specific direction to hand over the possession of the floor mill to Plaintiff. It was in fact necessary for the Trial Court at that stage only to pass clear order regarding possession.

11. When ambiguity in the order was brought to the notice of the Trial Judge, the learned Trial Judge has clarified the order dated 07/12/2006 and thereby stated that the Receiver is discharged but he has to hand over the possession of the floor mill to the Plaintiff in pursuance of the decree. So, it is very clear that the order passed by the learned Trial Judge on 16/08/2007 is legal and correct. If this clarification is not allowed then it would amount to allowing the defendants to continue in possession of the suit floor mill though specific decree is passed against them directing not to obstruct the Plaintiffs in the said suit floor mill business. Thus, I have no hesitation to hold that the order dated 16/08/2007 is legal and correct. There is no necessity to interfere with the same. Hence, I pass the following order :-

O R D E R

1. Appeal is dismissed.

2. Under the circumstances of the case, parties to bear their own costs of this appeal.

3. Interim order granted earlier is to continue till 15/10/2007.

(S.R. SATHE,J.)